

En

No. 78-1928

Supreme Court, U.S.
FILED

JUL 20 1979

MICHAEL RODAK, JR., CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1978

ELIZABETH B. STUART, not individually, but as a co-trustee under the Last Will and Testament of Harold L. Stuart, deceased, and ILLINOIS INSTITUTE OF TECHNOLOGY, a not-for-profit corporation,

Petitioners,

vs.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not individually, but as a co-trustee under the Last Will and Testament of Harold L. Stuart, deceased,

and

CHICAGO HISTORICAL SOCIETY, et al.,

Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR WRIT
OF CERTIORARI**

WILLARD L. KING

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Respondent*

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AUTHORITIES CITED

Austin, Jurisprudence, 5th ed. 856

Campbell v. Holt, 115 U.S. 620, 628 (1885)

Northern Trust Co. v. Continental Illinois National Bank & Trust Co., 43 Ill. App. 3d 169, 356 N.E. 2d 1049 (1st Dist. 1976).

Stuart v. Continental Illinois National Bank & Trust Co., 68 Ill. 2d 502, 369 N.E. 2d 1262 (1977) "**Stuart I**".

Stuart v. Continental Illinois National Bank & Trust Co., 75 Ill. 2d 22, 387 N.E. 2d 312 (1979) "**Stuart II**".

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This case is important only to its litigants. It has no National impact. No important principle of law is involved in it—it turns on its facts (See full statement of facts in 43 Ill. App. 3d 169; 356 N.E. 2d 1049). No last will comparable to Harold Stuart's can probably ever again come before the courts for construction.

Petitioners ignore the fact that the two opinions ("Stuart I and Stuart II") were written by the same judge. He can scarcely be accused of violating in his second opinion constitutional rights alleged to have been created only by his first.

Stuart I had stated that the Circuit Court erred in failing to find for IIT "as to" Count III. Count III asked for an additional grant to IIT of \$3.5 million "together with any increase, gains, income or profits thereof."

But Stuart I was not ambiguous about these "gains, income or profits." It stated: "We hold therefore, that upon remand an order be entered that an additional \$3.5 million of the estate be distributed to IIT." (68 Ill. 2d 502, 536). This clearly militated against IIT's claim for "gains, income and profits." And this construction was indicated also by the fact that any such gains, income or profits were part of the "excess funds" which were distributed rateably among the charities other than IIT. The opinion in Stuart I stated: "IIT is the only other charity which is precluded from taking a *pro rata* share in the excess funds, and the court could well have concluded that IIT's share of the estate was already of sufficient size." (68 Ill. 2d 502, 538). Stuart II held that Stuart I did not give IIT the "gains, income or profits." (75 Ill. 2d 22).

Petitioners rely upon the dissent by two judges of the Supreme Court of Illinois. That dissent reaches a different construction of the Harold Stuart will than the majority of the Court. But the dissent does not mention the due process clause of the 14th amendment or any other constitutional point. "Vested" has a somewhat different meaning in property law than in Constitutional law. (See Austin, Jurisprudence, 5th ed. 856; *Campbell v. Holt*, 115 U.S. 620, 628)

We submit that this Petition for Certiorari should be denied.

Respectfully submitted,

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